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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO – WESTERN DIVISION**

**GREGORY S. REICHENBACH,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**SOUTH CAROLINA STUDENT
LOAN CORPORATION,**

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227
ET. SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. GREGORY S. REICHENBACH (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of SOUTH CAROLINA STUDENT LOAN CORPORATION (“Defendant”) in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

1 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
2 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
3 purpose).

4 4. Congress also specifically found that “the evidence presented to the
5 Congress indicates that automated or prerecorded calls are a nuisance and an
6 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See
7 also, *Mims*, 132 S. Ct. at 744.

8 5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
9 case regarding calls to a non-debtor similar to this one:

10 The Telephone Consumer Protection Act ... is well known for
11 its provisions limiting junk-fax transmissions. A less-litigated
12 part of the Act curtails the use of automated dialers and
13 prerecorded messages to cell phones, whose subscribers often
14 are billed by the minute as soon as the call is answered—and
15 routing a call to voicemail counts as answering the call. An
16 automated call to a landline phone can be an annoyance; an
17 automated call to a cell phone adds expense to annoyance.

18 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

19 JURISDICTION AND VENUE

20 6. This Court has federal question jurisdiction because this case arises out of
21 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
22 132 S. Ct. 740 (2012).

23 7. This action arises out of Defendant’s violations of the Telephone Consumer
24 Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”).

25 8. Because Defendant conducts business within the State of Ohio, personal
26 jurisdiction is established.

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1 9. Venue is proper in the United States District Court, Northern District of
2 Ohio pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff
3 resides in the Allen County, State of Ohio, which is within this judicial
4 district; (ii) the conduct complained of herein occurred within this judicial
5 district; and, (iii) Defendant conducted business within this judicial district
6 at all times relevant.

7 **PARTIES**

8 10. Plaintiff is a natural person residing in Ohio and a “person” as defined by 47
9 U.S.C. § 277(a)(2)(A).

10 11. Defendant is a student loan company and is a “person” as defined by 47
11 U.S.C. § 227(a)(2)(A). Defendant’s State of Incorporation and principal
12 place of business are in the State of South Carolina.

13 **FACTUAL ALLEGATIONS**

14 12. Plaintiff alleges that at all times relevant herein Defendant conducted
15 business in the State of Ohio, County of Allen, and within this judicial
16 district.

17 13. Beginning in or about 2012, Defendant initiated multiple telephonic
18 communications to Plaintiff’s cellular telephone numbers ending in 4753
19 and 8300.

20 14. During each call, Defendant alleged that Defendant was seeking to collect an
21 alleged debt alleged to be owed by a third-party. As such, Plaintiff informed
22 Defendant on multiple occasions that said third-party could not be reached at
23 Plaintiff’s cellular telephone number and requested that Defendant cease and
24 desist further communications with Plaintiff.

25 15. Despite Plaintiff’s cease and desist request, Defendant has continued to
26 initiate telephonic communications to Plaintiff’s cellular telephones in an
27 attempt to collect this alleged debt.
28

16. On information and belief, Plaintiff alleges that Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to place said telephonic communications to Plaintiff since Plaintiff was often greeted by “dead air” prior to speaking with Defendant.

17. This ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

18. Defendant’s calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

19. Defendant’s calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

20. Plaintiff has never been in an “established business relationship” with Defendant as defined by 47 U.S.C. 227(a)(2), nor has Plaintiff ever sought Defendant’s services at any point in the past.

21. These telephone communications by Defendant, or its agent, violated 47 U.S.C. § 227(b)(1).

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated (“the Class”) pursuant to Fed. R. Civ. P. 23(b)(3).

23. Plaintiff represents, and is a member of the Class, consisting of all persons within the United States who received any telephone call from Defendant or their agent/s and/or employee/s to said person’s cellular telephone made through the use of any automatic telephone dialing system, which call was not made for emergency purposes within the four years prior to the filing of this Complaint.

24. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believe the Class members number in the hundreds of thousands, if not more. Thus, this

1 matter should be certified as a Class action to assist in the expeditious
2 litigation of this matter.

3 25. Plaintiff and members of the Class were harmed by the acts of Defendant in
4 at least the following ways: Defendants, either directly or through its agents,
5 illegally contacted Plaintiff and the Class members via cellular telephones
6 by using an ATDS, thereby causing Plaintiff and the Class members to incur
7 certain telephone charges for which Plaintiff and the Class members must
8 pay, and invading the privacy of said Plaintiff and the Class members.
9 Plaintiff and the Class members were damaged thereby.

10 26. This suit seeks only damages and injunctive relief for recovery of economic
11 injury on behalf of the Class, and it expressly is not intended to request any
12 recovery for personal injury and claims related thereto. Plaintiff reserves the
13 right to expand the Class definition to seek recovery on behalf of additional
14 persons as warranted as facts are learned in further investigation and
15 discovery.

16 27. The joinder of the Class members is impractical and the disposition of their
17 claims in the Class action will provide substantial benefits both to the parties
18 and to the court. The Class can be identified through Defendants' records or
19 Defendants' agents' records.

20 28. There is a well-defined community of interest in the questions of law and
21 fact involved affecting the parties to be represented. The questions of law
22 and fact to the Class predominate over questions which may affect
23 individual Class members, including the following:

- 24 a) Whether, within the four years prior to the filing of this Complaint,
25 Defendant or its agents initiated any telephonic communications to the
26 Class (other than a message made for emergency purposes or made
27 with the prior express consent of the called party) to a Class member
28

1 using any automatic dialing and/or SMS texting system to any cellular
2 telephone number;

3 b) Whether Defendant can meet its burden of showing it obtained prior
4 express consent (i.e., consent that is clearly and unmistakably stated);

5 c) Whether Defendant's conduct was knowing and/or willful;

6 d) Whether Plaintiff and the Class members were damaged thereby, and
7 the extent of damages for such violation; and

8 e) Whether Defendants and its agents should be enjoined from engaging
9 in such conduct in the future.

10 29. As a person that received at least one telephonic communication from
11 Defendant's ATDS without Plaintiff's prior express consent, Plaintiff is
12 asserting claims that are typical of the Class. Plaintiff will fairly and
13 adequately represent and protect the interests of the Class in that Plaintiff
14 has no interest antagonistic to any member of the Class.

15 30. Plaintiff and the members of the Class have all suffered irreparable harm as
16 a result of the Defendants' unlawful and wrongful conduct. Absent a class
17 action, the Class will continue to face the potential for irreparable harm. In
18 addition, these violations of law will be allowed to proceed without remedy
19 and Defendants will likely continue such illegal conduct. Because of the
20 size of the individual Class member's claims, few, if any, Class members
21 could afford to seek legal redress for the wrongs complained of herein.

22 31. Plaintiff has retained counsel experienced in handling class action claims
23 and claims involving violations of the Telephone Consumer Protection Act.

24 32. A class action is a superior method for the fair and efficient adjudication of
25 this controversy. Class-wide damages are essential to induce Defendants to
26 comply with federal and Ohio law. The interest of Class members in
27 individually controlling the prosecution of separate claims against
28 Defendants is small because the maximum statutory damages in an

individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

33. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

34. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

35. The foregoing acts and omissions of Defendant constitutes numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

36. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

37. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE

TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

38. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

39. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above-cited provisions of 47 U.S.C. §
2 227 et seq.

3 40. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
4 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in
5 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
6 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 41. Plaintiff and the Class are also entitled to and seek injunctive relief
8 prohibiting such conduct in the future.

9 PRAYER FOR RELIEF

10 Wherefore, Plaintiff respectfully request the Court grant Plaintiff and The Class
11 members the following relief against Defendants:

- 12 • An order certifying this action to be a proper class action pursuant to
13 Federal Rule of Civil Procedure 23, establishing an appropriate Class
14 and any Subclasses the Court deems appropriate, finding that Plaintiff is
15 a proper Class representative, and appointing the lawyers and law firms
16 representing Plaintiff as counsel for the Class;

17 FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF 18 THE TCPA, 47 U.S.C. § 227 ET SEQ.

- 19 • As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
20 Plaintiff seeks for themselves and each Class member \$500.00 in statutory
21 damages, for each and every violation, pursuant to 47 U.S.C. §
22 227(b)(3)(B).
- 23 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
24 conduct in the future.
- 25 • Any other relief the Court may deem just and proper.

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**SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for themselves and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

42. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: July 3, 2014

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR PLAINTIFF